

FILED

8/19/2020

ED

U.S. DISTRICT COURT
24-HOUR DEPOSITORYIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Sensa Verogna, Plaintiff,

v.

Twitter Inc., Defendant.

Case #: 1:20-cv-00536-SM

PLAINTIFF'S MOL IN REPLY TO TWITTER, INC.'S OBJECTION
TO PLAINTIFF'S MOTION FOR JUDICIAL NOTICE

A. Plaintiff asks this Court to take Judicial Notice of the following facts;

1. On May 4, 2020, plaintiff filed a complaint against defendant alleging violations of U.S.C. §1981 in Claim I, for violations of 42 U.S.C. § 2000a AND N.H.R.S.A 354-A:17 in Claim II and for violation of plaintiffs Constitutional Rights in Claim III.

[This is a factual allegation. It may turn out to be true or untrue, provable or unprovable, but what it asserts is not a matter of law but rather matter of fact,] (Hereinafter as "Factual allegation"), concerning the Plaintiff's Complaint and its effective date. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 1 ¶ 1], [Plaintiff Doc. 7, Declaration ¶ 4], [Plaintiff Doc. 14, MOL ¶ 1] [Plaintiff Doc. 14, Declaration ¶ 3], and Twitter's [Doc. 11, MOL, Page 2, ¶ 4] constitutes a binding judicial admission.

2. On May 11, 2020, defendant was duly served the summons and complaint by a service processor to the agent of record for Twitter Inc., The Corporation Trust Company Corporation, Trust Center, 1209 Orange Street, Wilmington, DE 19801.

"Factual allegation" concerning the Plaintiff's Summons and service of his Complaint. Twitter withheld any objection or otherwise never contradicted

[Plaintiff Doc. 2], [Plaintiff Doc. 7, Declaration ¶ 5], [Plaintiff Doc. 14, MOL ¶ 1] [Plaintiff Doc. 14, Declaration ¶ 4].

3. On May 18, 2020, plaintiff submitted to the court, Return of Service Executed as to Twitter Inc.

“Factual allegation” concerning the Plaintiff’s Summons and service of his Complaint. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 7., Declaration ¶ 6], [Plaintiff Doc. 14, MOL ¶ 1] [Plaintiff Doc. 14, Declaration ¶ 5].

4. Defendant was required under Rule 12, to answer Plaintiff’s Complaint on or before June 1, 2020. [Fed. R. of C.P 12].

“Factual allegation” concerning the Plaintiff’s Summons and service of his Complaint. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 2], [Plaintiff Doc. 7., Declaration ¶ 6], [Plaintiff Doc. 14, MOL ¶ 3] [Plaintiff Doc. 14, Declaration ¶ 5]

5. The act of appearing in court to assert or defend claims on behalf of another lies at the very heart of the practice of law.

“Factual allegation” concerning Attorney Schwarz’s appearance in defending Twitter. Generally known in this jurisdiction. See N.H. R P. Conduct, Rule 3.1 advocate. See also (In re Steven E. Ferrey, 774 A.2d 62 (R.I. 2001). (“The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or

other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body[.]” (Emphasis added.). Or is otherwise generally known in this jurisdiction.

6. Attorney Schwartz’s absence of her signature is moot, as she still “presented” the Motion to the Court by including her name onto the document while advocating and representing Twitter the Defendant in a responsive pleading before the Court.

“Factual allegation” concerning whether a signature is required to constitute “submitting” a pleading or answer. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 7, Declaration ¶ 7], [Plaintiff Doc. 14, MOL ¶ 27], [Plaintiff Doc. 1., Declaration ¶ 6 and 9], [Plaintiff Doc. 31, Declaration ¶ 3 and 4]. See Local Rule 83.2 (b) “An attorney so permitted to practice before this court in a particular action shall at all times remain associated in the action with a member of the bar of this court upon whom all process, notices, and other papers shall be served, who shall sign all filings submitted to the court and whose attendance is required at all proceedings, unless excused by the court.” Or is otherwise generally known in this jurisdiction.

7. Submitting and appearing before the court by an Attorney who had not been granted pro hac vice status prior to the filing is practicing the “unauthorized practice of law” under N.H. RSA 311:7.

“Factual allegation” concerning whether submitting and appearing would be engaged in the “unauthorized practice of law”. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, MOL ¶ 27], [Plaintiff Doc. 3., Declaration ¶ 3 and 4]. See (In re Steven E. Ferrey, 774 A.2d 62 (R.I. 2001)), Since

1917, N.H. RSA 311:7, has provided that: "No person, except a member of the bar of this state, whose authority as a member to practice law is in full force and effect, shall practice law in this state." Or is otherwise generally known in this jurisdiction.

8. Attorney Schwartz's act of submitting a motion before this Court constitutes "the practice of law."

"Factual allegation" concerning whether submitting a motion before the court constitutes the practice of law". Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, MOL ¶ 28]. See Local Rule 83.2 (b). See (In re Steven E. Ferrey, 774 A.2d 62 (R.I. 2001)), (Since 1917, N.H. RSA 311:7, has provided that: "No person, except a member of the bar of this state, whose authority as a member to practice law is in full force and effect, shall practice law in this state."). Or is otherwise generally known in this jurisdiction.

9. Attorney Schwartz's Motion is defined as an appearance before the Court.

"Factual allegation" generally known in this jurisdiction.

10. Attorney Schwartz;

A. is an attorney admitted to practice in another state.

"Factual allegation" concerning the Plaintiff's Complaint and its effective date. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 7., Declaration, Attached Exhibit A], [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff Doc. 14, MOL ¶ 16] [Plaintiff Doc. 14., Declaration ¶ 10], [Plaintiff Doc. 31, Declaration ¶ 3 and 4]. and Twitter's [Doc. 9, MOL] constitutes a binding judicial admission.

B. counseled Twitter on New Hampshire Laws.

“Factual allegation” concerning Attorney Schwartz’s representation of Twitter. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7., Declaration ¶ 11], [Plaintiff’s Doc. 14, Motion ¶ 3], [Plaintiff’s Doc. 14, MOL ¶ 18], [Plaintiff’s Doc. 14, Declaration ¶ 10].

C. drafted the Motion on behalf of Twitter.

“Factual allegation” concerning Attorney Schwartz’s representation of Twitter. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7., Declaration ¶ 11], [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff’s Doc. 14, MOL ¶ 18].

D. is not authorized by law to practice law in New Hampshire.*

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7.2 Declaration ¶ 11], [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff Doc. 14, MOL ¶ 18], [Plaintiff Doc. 1., Declaration ¶ 7], [Plaintiff Doc. 31, Declaration ¶ 3 and 4]. and Twitter’s [Doc. 9, MOL] constitutes a binding judicial admission. *Plaintiff would reformat this question to now read. “10. Attorney Schwartz, E. was not authorized to practice law in New Hampshire until August 19, 2020.”

E. has never received this Courts approval to appear pro hac vice.*

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter’s Doc. 9, Motion for Pro Hac Vice was not approved until August 19, 2020. *Plaintiff would reformat this question to now read. “10. Attorney Schwartz, E. did not receive pro hac vice until August 19, 2020.”

F. continues to counsel, draft and submit pleadings on behalf of Twitter.

See Twitter's [Doc's. 3, 9, 10, 11, 17, 18, 21, 22, 23, 24, 25, 26, 27, 37, 43, 44, 50 and 51], which constitute binding judicial admissions or are otherwise known in this jurisdiction.

G. through Attorney Eck, filed for pro hac vice on June 8, 2020.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, Declaration ¶ 8] and Twitter's [Doc. 9] constitutes a binding judicial admission or otherwise is known in this jurisdiction.

11. On June 1, 2020, Attorney Schwartz;

A. submitted a motion to the court on behalf of herself.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 1., Declaration ¶ 10] [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff Doc. 14., MOL ¶ 3] and [Defendant Doc. 3], constitutes a binding a judicial admission or otherwise is known in this jurisdiction.

B. submitted the motion to the court on behalf of Twitter.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff Doc. 14, MOL ¶ 3], [Plaintiff Doc. 14, Declaration ¶ 6], and [Defendant Doc. 3] constitutes a binding judicial admission or otherwise is known in this jurisdiction.

C. was not authorized by law to practice in New Hampshire.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc., 7, Declaration ¶ 11], [Plaintiff Doc. 14, Motion ¶ 3], [Plaintiff Doc. 14, MOL ¶ 5, 18] [Plaintiff Doc. 14, Declaration ¶ 7]. [Plaintiff Doc. 31, Declaration ¶ 3 and 4].

D. admits that a motion for pro hac vice admission had not been filed with the court.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, Declaration ¶ 8], [Plaintiff Doc. 14, MOL ¶ 17].

E. had not requested pro hac vice from this court.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 7, Declaration ¶ 11], [Plaintiff Doc. 14, MOL ¶ 17, 2).], [Plaintiff Doc. 14, Declaration ¶ 7].

F. was not authorized to appear or practice before this court.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 1., Declaration ¶ 7], [Plaintiff Doc. 14., MOL ¶ 18, 28].

G. did not formally start any application procedure for admission.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7, Declaration ¶ 10 at 2).], [Plaintiff Doc. 14.1, MOL ¶ 17, 1).], [Plaintiff Doc. 14, Declaration ¶ 11 at 1).].

H. had not paid any fee's to this court.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 10 at 3) and 6).], [Plaintiff Doc. 14, MOL ¶ 17, 3).], [Plaintiff Doc. 14., Declaration ¶ 11 at 3).].

I. had not taken any oath before this court.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 10 at 4).], [Plaintiff Doc. 14, Declaration ¶ 11 at 4).].

J. had not motioned the court for a special admission under Local Rule 83.1(d).

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 10 at 5).], [Plaintiff Doc. 14., MOL ¶ 17, 4).], [Plaintiff Doc. 14, Declaration ¶ 11 at 5).].

K. had not submitted any supporting affidavit to this court.

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 10 at 6).], [Plaintiff Doc. 14, MOL ¶ 17-6).], [Plaintiff Doc. 14, Declaration ¶ 11 at 6).].

L. had not motioned the court for a limited appearance for preparing**documents such as her Motion pursuant to Local Rule 83.7.**

"Factual allegation" concerning Attorney Schwartz's unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7,

Declaration ¶ 10 at 7).], [Plaintiff Doc. 14., MOL ¶ 17-7).], [Plaintiff Doc. 14, Declaration ¶ 11 at 7).].

M. had not been granted any leave to file pro hac vice by this court.

“Factual allegation” concerning Attorney Schwartz’s unauthorized practice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7, Declaration ¶ 11].

12. The Doc. 7.2, Declaration attached “Exhibit A”, is an e-mail correspondence from Jonathan Eck to Sensa Verogna on June 4, 2020.

“Factual allegation” concerning Attorney Eck’s e-mail correspondence concerning Attorney Schwartz’s Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7., Declaration ¶ 8, Attachment A].

13. “Exhibit A” indicates that on June 4, Attorney Ecks’ believed Attorney Schwartz;

A. was not allowed to appear and practice before this Court.

“Factual allegation” concerning Attorney Eck’s e-mail correspondence concerning Attorney Schwartz’s Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7.] Declaration ¶ 8, Attachment A, Attorney Eck states “This means that we will ask the Court to allow Attorney Schwartz to appear and practice before the District of New Hampshire so she can represent Twitter in active association with me”.

B. had not motioned the Court for Pro Hac Vice.

“Factual allegation” concerning Attorney Eck’s e-mail correspondence concerning Attorney Schwartz’s Pro Hac Vice. Twitter withheld any objection or otherwise

never contradicted [Plaintiff's Doc. 7, Declaration ¶ 8], Attachment A, Attorney Eck states "Julie Schwartz... intends to file".

C. was not allowed to represent Twitter in this Court.

"Factual allegation" concerning Attorney Eck's e-mail correspondence concerning Attorney Schwartz's Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 8], Attachment A, Attorney Eck states " will ask the Court to allow".

14. Attorney Eck believes that Attorney Schwartz appeared on the Motion.

"Factual allegation" concerning Attorney Eck's e-mail correspondence regarding Attorney Schwartz's Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7, Declaration ¶ 8, Attachment A].

15. Attorney Eck believes that Attorney Schwartz is included in the Motion.

"Factual allegation" concerning Attorney Eck's e-mail correspondence regarding Attorney Schwartz's Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 7., Declaration ¶ 8, Attachment A] and Twitter's [Doc. 25, MOL, Page 1, ¶1] constitutes a binding judicial admission. See also New Hampshire Rules of Professional Conduct, Rule 1.0 (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

16. Unauthorized practice of law is not typical practice in New Hampshire.

"Factual allegation" See N.H. RSA 311:7 on its face.

17. The Defendant's Motion is illegal under N.H. RSA 311:7.

“Factual allegation” concerning Attorney Schwartz’s Pro Hac Vice. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7, Declaration ¶ 11], [Plaintiff Doc. 14, MOL ¶ 19, 28], and on the face of N.H. RSA 311:7.

18. The Defendant’s Motion is prohibited under precedential laws.

“Factual allegation” concerning Attorney Schwartz’s Pro Hac Vice and her submittal of Doc. 3. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7, Declaration ¶ 11], [Plaintiff Doc. 14, MOL ¶ 19, 28], See also, Local Rule 83.2 (b). See (In re Steven E. Ferrey, 774 A.2d 62 (R.I. 2001)), (Since 1917, N.H. RSA 311:7, has provided that: “No person, except a member of the bar of this state, whose authority as a member to practice law is in full force and effect, shall practice law in this state.”), and on the face of N.H. RSA 311:7, or is otherwise generally known in this jurisdiction.

19. The Defendant’s Motion is non-conforming under Fed. Rules of C.P., Rule 12.

“Factual allegation” concerning whether an illegal submittal or answer to the court, which is found to be submitted illegally, is in fact conforming under this rule. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 7, Declaration ¶ 12]. See Fed. Rules of C.P., Rule 12 or is generally know in this jurisdiction.

20. New Hampshire has a strong policy against the unauthorized practice of law.

“Factual allegation” concerning whether submitting a motion before the court constitutes the practice of law”. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 14, MOL ¶ 9], [Plaintiff’s Doc. 39, MOL ¶ 6] “The

strong public policy against the unauthorized practice of law is embodied in the American Bar Association Code of Professional Responsibility, which this court formally adopted as the New Hampshire Code of Professional Responsibility on April 26, 1977. Disciplinary Rule 3-101(A) of the Code prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law”, or is otherwise generally known in this jurisdiction.

21. Generally, the use of the word "shall" in a statutory provision is a command, requiring mandatory enforcement.

“Factual allegation” concerning how New Hampshire Courts interpret the word “shall”. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL ¶ 8] “The word “shall” is “a command which requires mandatory enforcement” (quotation omitted)) *See William Bovaird v. New Hampshire Department of Administrative Services* (N.H. 2014); *McCarthy v. Wheeler*, 152 N.H. 643, 645 (2005) (considering the legislature’s use of the word “shall” as a command, indicating a mandatory intent); *Zadvydas v Davis*, 533 US 678, 697-97 (2001) or is otherwise known in this jurisdiction.

22. The use of the word “shall” in a Rule, Statute or Law is not discretionary and requires mandatory enforcement.

“Factual allegation” concerning how New Hampshire Courts interpret the word “shall. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL ¶ 8]. “In 2007 the U.S. Supreme Court said (“The word ‘shall’ generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive”); *Black’s Law Dictionary* 1375 (6th ed. 1990)

("As used in statutes ... this word is generally imperative or mandatory") National Ass'n v. Defenders of Wildlife, 127 S. Ct. 2518, 2531-2532 (US 2007). See New Hampshire rules of Professional Conduct, Statement of Purpose, "Some of the Rules are imperatives, expressed by the terms "shall" or "shall not"." Or is otherwise known in this jurisdiction.

23. The use of the word "must" in a Rule, Statute or Law is not discretionary and requires mandatory enforcement.

"Factual allegation" concerning how New Hampshire Courts interpret the word "must". Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 39 MOL ¶ 10], "N.H. RSA 311:7 is clear, and the court must give effect to the intent of the law, that no one should appear "unauthorized" before a court in *New Hampshire. Miller v. French*, 530 U. S. 327, 336 (2000) (quoting *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195,215 (1962)). N.H. RSA 311:7 is so substantive that the federal court has to give it effect." Or is otherwise known in this jurisdiction.

24. The rule of law means that everyone must obey the law, and no one is above the law.

"Factual allegation" concerning how New Hampshire Courts interpret the rule of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff's Doc. 39 MOL ¶ 22, footnote [6]], "Lavoie, supra note 60, at 616; Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. CHI. L. REV. 1175, 1176-79, 1182-83 (1989) (arguing that judges must apply general rules, formulated from legal texts,

to advance legal equality, uniformity, and predictability).” Or is otherwise known in this jurisdiction.

25. A Federal Court must apply state laws if no federal laws apply.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL ¶ 16], “The Rules of Decision Act provided that in the absence of federal law, the “laws of the states” should govern. See *Swift v. Tyson*, 41 U.S. (16 Pet.) 1, 18 (1842) (quoting Judiciary Act of 1789, ch. 20, § 34, 1 Stat. 73, 92 (codified as amended at 28 U.S.C. § 1652 (2006))).” Or is otherwise known in this jurisdiction.

26. a Member of the Federal Court Advisory Committee, for this Court, The United States District Court for the District of New Hampshire.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39, MOL ¶ 16],

27. Attorney Eck is a Board Member of Governors, New Hampshire Bar Association.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39, MOL ¶ 16],

28. Attorney Eck is Chair of the New Hampshire Bar Association Committee on Cooperation With the Courts.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39, MOL ¶ 16],

29. Attorney Eck is an Executive Committee Member of the New Hampshire Estate Planning Council.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39, MOL ¶ 16],

30. Attorney Eck is the Vice President and Trustee of the New Hampshire Supreme Court Society.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL, ¶ 16],

31. Attorney Eck is a past President of the Manchester Bar Association.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL, ¶ 16],

32. An Attorney’s conduct should conform to the requirements of the law.

“Factual allegation” concerning choice of law. Twitter withheld any objection or otherwise never contradicted [Plaintiff’s Doc. 39 MOL, ¶ 16],

33. The Defendant is not an infant, incompetent, or presently engaged in the military service.

“Factual allegation” concerning the Defendant, a Corporation cannot be either an infant, incompetent or engaged in the military service. Twitter withheld any objection or otherwise never contradicted [Plaintiff Doc. 7, Declaration ¶ 5], or is generally known in this jurisdiction.

34. Judicial admissions dispense with the need to offer proof on facts "about which there is no real dispute." Id. Thus, these admissions "go to matters of fact which, otherwise, would require evidentiary proof." Id. In MacDonald, we reiterated that we are "reluctant to treat [statements dealing with opinions and legal conclusions] as binding judicial admissions." 110 F.3d at 341. Further, we explained that "[j]udicial admissions . . . typically concern only matters of

fact." Id. In re E. I. Du Pont De Nemours & Co. C-8 Pers. Injury Litig., Civil Action 2:13-md-2433, 5-6 (S.D. Ohio Mar. 10, 2015)

35. The well-recognized concept of judicial admissions was raised in *Dang v. Smith* (2010) 190 Cal.App.4th 646. In *Dang*, the court held that "statements in a pleading are always admissible against the pleader to prove the matter asserted – as is any other statement by a party." The court categorized these statements as "'a conclusive concession of the truth of [that] matter,' thereby 'removing it from the issues.'" In other words, a judicial admission is an admission incorporated in a pleading that is conclusive in that proceeding on the party who makes it.

36. A judicial admission is a party's unequivocal concession of the truth of a matter, which effectively removes the fact as an issue from the litigation. (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 48.) Facts established by pleadings as judicial admissions are conclusive and may not be contradicted. As one court has put it, "a pleader cannot blow hot and cold as to the facts positively stated." (*Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746.) "A judicial admission is ordinarily a factual allegation by one party that is admitted by the opposing party." (*Ibid.*) *Barsegian v. Kessler & Kessler*, 215 Cal.App.4th 446, 452 (2013).

37. These admissions, therefore, are Twitter's unequivocal concession of the truth of these matters, and removes the matters as an issue in this case." (Pls.' Second Mot. for Summ. J. at 4, ECF No. 1205-1.) In re E. I. Du Pont De Nemours & Co. C-8 Pers. Injury Litig., Civil Action 2:13-md-2433, 3 (S.D. Ohio Mar. 10, 2015) as it relates to Doc.'s 3 and 46.

38. Evidence in the record without objection, even though technically objectionable may be considered by the jury. *Carl v. Kurtz*, 255 Pa. Super. 198, 386 A.2d 577 (1978); *Rose v. Hoover*, 231 Pa. Super. 251, 331 A.2d 878 (1975). A party may not sit by and hear testimony and then object. *Evans v. Otis Elevator Co.*, 403 Pa. 13, 168 A.2d 573 (1961). *Com. v. Washington*,

274 Pa. Super. 560, 567 (Pa. Super. Ct. 1980) "Furthermore, when evidence is admitted without objection, even though it may in fact be "incompetent," it may be used by the factfinder for whatever probative value it may have." *See Carl*. "(A) failure to make a sufficient objection to evidence which is incompetent waives any ground of complaint as to the admission of the evidence. But it has another effect, equally important. If the evidence is received without objection, it becomes part of the evidence in the case, and is usable as proof to the extent of the rational persuasive power it may have. The fact that it was inadmissible does not prevent its use as proof so far as it has probative value." McCormick, Evidence 125 (2d ed. 1972). *Carl v. Kurtz*, 255 Pa. Super. 198, 204 n.1 (Pa. Super. Ct. 1978). A failure to object to the admission of evidence ordinarily constitutes a waiver of the right to object to the admissibility or use of that evidence. *Taylor v. Celotex Corp.*, 393 Pa. Super. 566, 574 A.2d 1084 (1990). If there is no objection, the court is not obligated to exclude improper evidence being offered. *Commonwealth v. Collins*, 492 Pa. 405, 424 A.2d 1254 (1981), The Plaintiff has met the burden of indisputability as Twitter has not challenged any of the facts Plaintiff seeks Judicial Notice upon and has demonstrated that these facts are relevant to the Courts decision regarding Doc. 3 and Doc. 14 and Doc. 46. A decision regarding Doc. 3 can only be legally rendered if Doc. 3 is in fact, legal. Which it is not.

39. Twitter hasn't even made a scant effort to explain why the questions are inappropriate, and when it has, it has only been stated in an overly broad manner. *See Coyne v. Krempels*, 36 Cal. 2d 257, 261-262 [223 P.2d 244]. A failure of the defendant to file counter affidavits cannot be remedied by resort to allegations or denials in a verified answer. (*Id.*; *Cone v. Union Oil Co.*, 129 Cal. App. 2d 558, 562-563 [277 P.2d 464]; 4 Witkin, Cal. Procedure (1971) Proceedings Without Trial, § 188, p. 2837.) Therefore, the judgment may be entered in accordance with the

uncontroverted allegations in a moving party's Declarations, which in this case are the Plaintiff's
Declarations contained and attached to Doc.'s 7, 14, and 46.

40. Evidence admitted without objection may be used for any reason. Where improper
evidence is admitted without objection, it may be used by the fact finder for whatever probative
value it may have, as though it was admissible. This is true even if the evidence is incompetent. It
will be given its natural probative force as though it were competent. *Carl v. Kurtz*, 255 Pa. Super.
198, 386 A.2d 577 (1978); *Castel v. Mitchell*, 56 Pa. Commw. 64, 423 A.2d 1375 (1981).
Washington, 274 Pa. Super. 560, 418 A.2d 548 (1980). What Is Timely? An objection to improper
evidence should be made as soon as the ground for objection becomes apparent. *Loughrey v.*
Pennsylvania R. Co., 284 Pa. 267, 131 A. 260 (1925) This rule reflects the concern that a lawyer
should not be permitted to withhold an objection as a strategic ploy. 2 J. Jeans, Sr., *Litigation* 785
(1986). A party may not withhold an objection in order to determine whether the response will be
favorable or unfavorable and then object in the event that the testimony is unfavorable.
Commonwealth v. Washington, 274 Pa. Super. 560, 418 A.2d 548 (1980). TWITTER HAS NOT
CONTENTESTED THESE FACTS the Plaintiff wishes notice upon the record.

WHEREFORE, the Plaintiff, respectfully requests that this Honorable Court:

- A. Judicially Notice the known facts listed above;
- B. Direct Plaintiff if form is incorrect; and
- C. Grant such other and further relief as the Court deems just.

Respectfully,


/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com
Page 18 of 19

418

CERTIFICATE OF SERVICE

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I hereby certify that on this 19th day of August 2020, the foregoing document was made upon

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the Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie

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E. Schwartz, Esq., JSchwartz@perkinscoie.com.

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